

PATENT COOPERATION TREATY

TRANSLATION

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

To:

Date of mailing (day/month/year)	See Form PCT/ISA/210 (sheet 2)
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Applicant's or agent's file reference SA 5535-02WO		FOR FURTHER ACTION See paragraph 2 below	
International application No. PCT/EP2004/053202	International filing date (day/month/year) 01.12.2004	Priority date (day/month/year) 19.12.2003	
International Patent Classification (IPC) or both national classification and IPC C10L3/00			
Applicant SYMRISE GMBH & CO. KG			

1. This opinion contains indications relating to the following items:

<input checked="" type="checkbox"/>	Box No. I	Basis of the opinion
<input checked="" type="checkbox"/>	Box No. II	Priority
<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
<input type="checkbox"/>	Box No. IV	Lack of unity of invention
<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
<input checked="" type="checkbox"/>	Box No. VI	Certain documents cited
<input type="checkbox"/>	Box No. VII	Certain defects in the international application
<input type="checkbox"/>	Box No. VIII	Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/EP	Authorized officer
Facsimile No.	Telephone No.

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Box No. I

Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐

This opinion has been established on the basis of a translation from the original language into the following language

_____, which is the language of a translation furnished for the purposes of international search (under Rule 12.3 and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

☐

a sequence listing

☐

table(s) related to the sequence listing

b. format of material

☐

in written format

☐

in computer readable form

c. time of filing/furnishing

☐

contained in the international application as filed.

☐

filed together with the international application in computer readable form.

☐

furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

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Box No. II

Priority

1. ☐ The following document has not yet been furnished:

☐ copy of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(a)).

☐ translation of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. ☒ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43bis.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

1. PCT application WO 2004/024852 published on 25 March 2004 (D1; see also Box VI) by the same applicant already discloses the subject matter of claim 1 of the current application (see Box V). Accordingly, this subject matter is not disclosed for the first time on the priority date 19 December 2003, as stated in the application. This priority date therefore cannot be acknowledged (PCT Rules 64.1, 64.3 and 70.10). Accordingly, the filing date, 1 December 2004, applies as the priority date of the application and D1 applies as a document pursuant to PCT Rule 64.1.

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Box No. V	Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement		
1. Statement			
Novelty (N)	Claims		YES
	Claims	1-12	NO
Inventive step (IS)	Claims		YES
	Claims	1-12	NO
Industrial applicability (IA)	Claims	1-12	YES
	Claims		NO
2. Citations and explanations:			
<p>1. The present application does not meet the requirements of PCT Article 33(1) because the subject matter of claim 1 is not novel under PCT Article 33(2).</p> <p style="margin-left: 40px;">Document D1 discloses (the references between parentheses relate to this document) mixtures according to claim 1, comprising:</p> <ul style="list-style-type: none"> A) at least two different C1-C6-alkyl acrylates; B) at least one compound from the group of the C1-C8-mercaptans, the C4-C12-thiophenes, the C2-C8-sulphides or the C2-C8-disulphides; C) at least one compound from the group of the norbornenes, the C1-C5-carboxylic acids, the C1-C9-aldehydes, the C6-C14-phenols, the C7-C14-anisoles or the C4-C14-pyrazines; D) optionally an antioxidant, <p style="margin-left: 40px;">and their use for odorizing flue gas (D1: page 1 lines 9-12; claims).</p> <p>2. The same reasoning also applies correspondingly to independent claims 9 and 11. The subject matter of these claims is therefore not novel (PCT Article 33(2)).</p>			

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Box No. V

Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

3. Dependent claims 2-8, 10 and 12 do not contain any features which, in combination with the features of any claim to which they refer back, meet the PCT requirements for novelty, since they are also disclosed in D1.

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Box No. VI Certain documents cited

1. Certain published documents (Rule 43bis.1 and 70.10)

Application No. Patent No.	Publication date (day/month/year)	Filing date (day/month/year)	Priority date (valid claim) (day/month/year)
WO 2004/024852 A	25.03.2004	22.08.2003	27.08.2002

2. Non-written disclosures (Rule 43bis.1 and 70.9)

Kind of non-written disclosure	Date of non-written disclosure (day/month/year)	Date of written disclosure referring to non-written disclosure (day/month/year)
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See form 210